



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

November 9, 1951

Hon. L. H. Flewellen, Chairman
Industrial Accident Board
Austin, Texas

Opinion No. V-1341

Re: Application of new reduced discount rate for present payment of unmatured workmen's compensation under H. B. 89, Acts 52nd Leg., to payments occasioned by injuries occurring prior to the effective date of this Act.

Dear Mr. Flewellen:

Your request for an opinion deals with the proper application of House Bill 89, Acts 52nd Leg., R.S. 1951, ch. 78, p. 127, fixing the discount rate for prepayment or acceleration of weekly workmen's compensation benefits at 4%, effecting a reduction from 6% theretofore allowable. Your question asks generally which rate applies to cases involving compensable injuries occurring prior to April 25, 1951, the effective date of the Act.

The Act provides in part:

"Section 1. That Section 15a of Article 8306 of the Revised Civil Statutes of Texas, 1925, be and the same is hereby amended so as to hereafter read as follows:

"Sec. 15a. In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the board that the amount of compensation being paid is inadequate to meet the necessities of the employee or beneficiary, the board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid allowing discount for present payment at the rate of four per cent (4%), compounded annually; provided that in no case shall the amount to which it is increased exceed the

amount of the average weekly wages upon which the compensation is based; provided it is not intended hereby to prevent lump sum settlement when approved by the board.'

"Sec. 2. That Section 1 of House Bill No. 877, Chapter 248, Acts of the Forty-second Legislature, Regular Session, 1931, be and the same is hereby amended so as to hereafter read as follows:

"Section 1.

'In all cases when the payments of weekly compensation due an injured employee or beneficiary coming within the provisions of the Workmen's Compensation Act are accelerated by increasing the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, and when the liability of the insurance company is redeemed by the payment of a lump sum, by agreement of parties interested, or as a result of an order made by the Industrial Accident Board or a judgment rendered by a court of competent jurisdiction, and when advanced payments of compensation are made, and in all cases when compensation is paid before becoming due, discount shall be allowed for present payment at four per cent (4%), compounded annually. . . .'

The quoted portion of Section 2 amends Article 8306a, V.C.S. The only pertinent change in the statutes amended is in the rate of discount.

Your specific questions are:

"Question No. One: Since said amended Section 15a of Art. 8306, supra, reduces the discount rate for present payment from 6% (legal rate of interest) to 4%, compounded annually, does said new discount rate of 4%, compounded annually, apply to unmatured weekly compensation payments for which an insurance carrier is liable for compensable injuries occurring previous to April 25, 1951, as well as for compensable injuries occurring on and after said date?

"Question No. Two: Since said amended Section 1 of H. B. No. 877, Chap. 248, Acts of the 42nd Legislature, Regular Session, 1931, (Vernon's Ann. Civ. St., Art. 8306a) reduces the discount rate from 6%, compounded annually to 4%, compounded annually, does said new discount rate of 4%, compounded annually, apply to unmatured weekly compensation payments for which an insurance carrier is liable for compensable injuries occurring previous to April 25, 1951, as well as for compensable injuries on and after said date?"

In Traders' & General Ins. Co. v. Powell, 65 S.W. 2d 269 (Tex. Comm. App. 1933), the Court held that an amendment to the workmen's compensation statutes fixing the discount rate at 6% was not applicable to an injury and judgment thereon rendered in the trial court prior to the effective date of the amendment, noting that the claimant's rights arose and had been adjudicated prior to the effective date. The decision was based on the following language at page 270:

"It will be observed that whatever rights defendant in error had arose under the provisions of the policy issued under the old law. Article 8306. Since the enactment of the workmen's compensation statutes in this state, the courts have held that the legal relation of employee, employer, and insurer operating thereunder is contractual. Middleton v. Texas Power & Light Co., 108 Tex. 96, 185 S.W. 556; Patton v. New Amsterdam Casualty Co., (Tex. Com. App.) 36 S.W.(2d) 1000. The provisions of the statutes existing at the time of the issuance of the policy in controversy became a part of the contract. It is true the Legislature has the power to change the remedy, if it sees fit, without affecting the provisions of the obligations of the contract, if an adequate remedy is provided for. Patton v. New Amsterdam Casualty Co., supra; Farmers' Life Ins. Co. v. Wolters (Tex. Com. App.) 10 S.W.(2d) 698.

"The Forty-Second Legislature (chapter 248) enacted article 8306a (Vernon's Ann. Civ. St.) providing for a discount on lump sum awards of 6 per cent. This act did not become effective until August 22, 1931. Since defendant in error's

rights arose and had been adjudicated prior to this time, the provisions of article 8306a would not control, unless classified as being remedial in nature. An analysis of the terms of article 8306a with respect to the discount rate plainly shows that it affects the vital obligation of the contract and is not remedial in nature." (Emphasis added.)

In *Associated Employers' Reciprocal v. Brown*, 56 S.W.2d 483, 485 (Tex. Civ. App. 1932, error dismissed), in speaking of an amendment of the statute increasing the maximum compensation payable to an injured workman to \$20.00, it is stated:

"... By the terms of the statute in force at the time the policy in this case was issued, \$15 per week was the maximum amount which could be recovered, and the rights of Brown as to the amount of recovery is governed by that act. The effect of the amendment, if applied, would be to impair the obligations of the original contract, which cannot be done."

The holding in the *Brown* case is cited in *Texas Employers' Ins. Ass'n. v. Whiteside*, 77 S.W.2d 767, 770 (Tex. Civ. App. 1934), wherein the court said:

"... The contract of insurance and the statute under which it was issued control the compensation to be paid the employee as the result of the accident and injuries suffered."

See, also, *Great American Indemnity Co. v. McElyea*, 57 S.W.2d 966 (Tex. Civ. App. 1933, error ref.); *Ocean Accident & Guarantee Corp. v. Pruitt*, 58 S.W.2d 41 (Tex. Comm. App. 1933); *Norwich Union Indemnity Co. v. Wilson*, 17 S.W.2d 68, 75 (Tex. Civ. App. 1929, error dismissed); 45 Tex. Jur. 367, Workmen's Compensation, Sec. 8.

Since the amendment here considered is of the same nature as that involved in the *Powell* case, it is our opinion that the law as it existed at the time the policy was issued covering the claims involved will govern. You are therefore advised that in the absence of circumstances indicating coverage under a later policy, the discount provided for in House Bill 89 will not apply to claims for injuries occurring prior to its effective date.

SUMMARY

H. B. 89, Acts 52nd Leg., R. S. 1951,
reducing discount rate on accelerated or ad-
vance payments of benefits under the Workmen's
Compensation Law, does not apply to injuries
covered by policies of workmen's compensation
insurance issued prior to its effective date.

Yours very truly,

PRICE DANIEL
Attorney General



Ned McDaniel



Joe S. Moore
Assistants

APPROVED:

Jesse P. Luton, Jr.
Reviewing Assistant

Charles D. Mathews
First Assistant

NMc/rt